

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VOSK INTERNATIONAL CO.,)	No. 11-1488 RSL
)	
Plaintiff,)	VOSK'S MOTION FOR ENTRY OF
)	DEFAULT
vs.)	
)	NOTE ON MOTION CALENDAR:
ZAO GRUPPA PREDPRIYATIJ OST and)	November 18, 2011
ZAO OST AQUA,)	
)	
Defendants.)	

INTRODUCTION

Plaintiff Vosk International Co. ("Vosk") moves for entry of default against defendants Zao Gruppa Predpriyatij Ost and Zao Ost Aqua ("Defendants") in accordance with Local Rule 55(a).

On October 17, Vosk served Defendants pursuant to the Court's Order Granting Plaintiff's *Ex Parte* Motion for Leave to Serve Defendants by Alternative Means (Ct. Dkt. 10). The deadline for Defendants to answer was November 10 (21 days + 3 days for service by U.S. Mail). Defendants failed to appear, plead, or otherwise defend themselves. Therefore, Vosk respectfully requests the Clerk to enter default against them.

VOSK'S MOTION FOR ENTRY OF
DEFAULT -- 1

No. 11-1488 RSL

ATKINS IP

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FACTS

On September 9, Vosk filed this action pursuant to 15 U.S.C. § 1071(b)(1) to appeal the U.S. Trademark Trial and Appeal Board's ("TTAB") final decision sustaining Defendants' opposition to Vosk's applications to register three trademarks with the U.S. Patent and Trademark Office, and for injunctive and other relief related to Defendants' infringement of Vosk's trademarks.¹

Defendants are Russian companies.² Because the Russian government refuses to effect service on its citizens on behalf of United States plaintiffs through the Hague Convention, Vosk moved the Court for an order granting them leave to serve Defendants through alternative means, namely, via U.S. Mail to the U.S. lawyer who represented Defendants in the TTAB action and to Defendants in Russia.³

On October 14, the Court granted Vosk's motion.⁴ The Order states, in pertinent part:

[T]he Court HEREBY ORDERS that Plaintiff in this case may serve Defendants by delivering a copy of the summonses and complaint (both in English and translated into Russian) via U.S. Mail to Maria Eliseeva, Esq., Houston Eliseeva, LLP, 420 Bedford St., Suite 155, Lexington, MA 02420, and (2) Defendants in Russia.⁵

On October 17, Vosk served Defendants by delivering a copy of the summonses and complaint (both in English and translated into Russian) to Ms. Eliseeva and Defendants via U.S. Mail in accordance with the Court's Order.⁶

¹ Declaration of Michael Atkins (filed herewith) ("Atkins Decl.") at ¶ 2; Complaint (Ct. Dkt. 1).

² Atkins Decl. at ¶ 3; Complaint at ¶¶ 3-4.

³ Atkins Decl. at ¶ 3; Vosk's *Ex Parte* Mot. for Leave to Serve Defs. by Alternative Means (Ct. Dkt. 8).

⁴ Atkins Decl. at ¶ 4; Order Granting Pl.'s *Ex Parte* Mot. for Leave to Serve Defs. by Alternative Means ("Court's Order of 10/14/11") (Ct. Dkt. 10).

⁵ Court's Order of 10/14/11 at 3:1-5.

⁶ Atkins Decl. at ¶ 5, Ex. A (Vosk's Proof of Service on Defendants).

To date, Defendants have not appeared, answered, or otherwise defended themselves in this case.⁷

AUTHORITY

Local Rule 55(a) provides:

Upon motion by a party noted in accordance with CR 7(d)(1) and supported by affidavit or otherwise, the clerk shall enter the default of any party against whom a judgment for affirmative relief is sought but who has failed to plead or otherwise defend. The affidavit shall specifically show that the defaulting party was served in a manner authorized by Fed. R. Civ. P. 4. A motion for entry of default need not be served on the defaulting party.

L.R. 55(a). *See also, Neu v. Sportsstuff, Inc.*, No. 07-5075-RBL, 2008 WL 2434210 (W.D. Wash. June 13, 2008) (Leighton, J.) (“The court clerk must enter default if a party fails to plead or otherwise defend against suit and that failure is shown by affidavit or otherwise.”), *citing* Fed. R. Civ. P. 55(a).

Vosk meets these criteria. It noted this motion in accordance with Local Rule 7(d)(1). Its complaint against Defendants seeks affirmative relief.⁸ It served Defendants in accordance with Federal Rule of Civil Procedure 4, following the Court’s Order granting them leave to serve Defendants by alternative means.⁹ Despite being served, Defendants have failed to appear, plead, or otherwise defend themselves in this case.¹⁰ The time for Defendants to do so expired on November 10.¹¹ *See* Fed. R. Civ. P. 12(a)(1)(A)(i) (providing 21 days to answer), 6(d) (providing an additional three days to answer when served by U.S. Mail). Given these facts, the Clerk should enter default against the Defendants.

⁷ *Id.* at ¶ 6.

⁸ *See* Complaint at 9:8-10:9.

⁹ Atkins Decl. at ¶ 5, Ex. A (Vosk’s Proof of Service on Defendants); Court’s Order of 10/14/11 at 3:1-5.

¹⁰ Atkins Decl. at ¶ 6.

¹¹ *Id.*

CONCLUSION

Vosk served Defendants according to the Court's Order granting them leave to do so via U.S. Mail. Defendants have not appeared, answered, or otherwise defended themselves in this case, even though the time for doing so has passed. Therefore, Vosk respectfully requests the Clerk enter default against Defendants.

DATED this 18th day of November, 2011.

By /s/ Michael G. Atkins

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